IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4414 of 1989

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

P M CHAUHAN

Appearance:

1. Special Civil Application No. 4414 of 1989

MR MANISH UPADHYAY for PRANAV G DESAI for Petitioner

MR MUKESH H RATHOD for Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 05/10/2004

ORAL JUDGEMENT

The petitioner, Gujarat State Road Transport

Corporation [hereinafter referred to as, `the Corporation'] challenges the judgment and award dated 20th February, 1989 passed by the learned Labour Court, Ahmedabad in Reference [LCA] No. 2001 of 1987.

The respondent herein [hereinafter referred to as `the workman'] was employed by the Corporation as Conductor since 29th April, 1976. On 13th January, 1984, the workman was posted on Dwarka-Nathdwara route. At the time of checking, it was found that the workman had issued interstate tickets to three group of passengers but not entered the same in the concerned columns. It was, therefore, alleged that the workman had misappropriated amount of fare collected from the said groups of passengers. The workman admitted that he had not filled in the concerned columns. However, he explained that he was required to make carbon copies of such entries. Since he did not have carbon paper, he did not make the relevant entries. The explanation was not acceptable to the Corporation. Considering the gravity of misconduct of misappropriation of the Corporation fund and considering his past service record, by Order dated 31st March, 1984, the workman was dismissed from service.

Feeling aggrieved, the workman raised industrial dispute. He challenged the validity of order of termination of his service and claimed reinstatement in service and backwages. At the time of hearing of the reference, the workman forgo his claim for backwages. The learned Labour Court recorded that the workman impliedly admitted the commission of acts of misconduct alleged against him. The Court recorded the finding that, "the workman tried to misappropriate the amount of tickets by not doing the necessary work, which he was supposed to do it. The concerned workman himself agreed to forgo his backwages for the period of his unemployment. This attitude of the workman that he has realized his folly and he has further realized he is rendered unemployed and thereby his family may be ruined." The Court, therefore, observed that the workman was required to be given more opportunity to correct himself. The Labour Court, therefore, allowed the claim made by the workman, directed the Corporation to reinstate the workman without backwages. It was further directed that the Corporation should withhold two increments of the workman with permanent effect. Feeling aggrieved, the Corporation has preferred the present petition.

Indisputably, the workman committed the act of misconduct involving financial irregularities. The

workman misappropriated the amount of fare collected from three groups of passengers. Thus, the workman misappropriated the Corporation fund. The explanation given by the workman that he did not have carbon paper did not appeal to the Corporation nor did the said explanation appeal to the Labour Court. However, the Labour Court considering the financial repercussions of the order of dismissal from service upon the family of the workman gave indulgence to the workman.

In my opinion, the Labour Court has erred two fold. First, in case of financial irregularities not less than misappropriation of the Corporation fund, no lenient view should be taken. Second, the learned Labour Court has failed to appreciate that the past conduct of the delinquent servant is relevant for the purpose of selecting a suitable punishment. In the present case, in a service of some 8 years, the workman was punished as many as 43 times; mainly for the acts of misconduct in not issuing tickets to the passengers after collecting fare from them; allowing passengers to travel free of charge; for coming late, for remaining absent, etc. Considering above referred service record of the petitioner and repeated acts of misconduct involving financial irregularity and misappropriation of the Corporation fund, the approach of the Labour Court in taking liberal view of the matter and in invoking power under Section 11-A of the Industrial Disputes Act, 1947 to interfere with the punishment imposed by the Corporation and to impose a lesser punishment requires to be deprecated. The powers vested under Section 11-A of the Act cannot be invoked for being liberal to the workmen committing grave misconduct of financial irregularity and misappropriation of Corporation fund.

In view of the above discussion, the petition is allowed. The impugned judgment and order dated 20th February, 1989 passed by the Labour Court, Ahmedabad in Reference [LCA] No. 2001 of 1987 is quashed and set-aside. The claim made by the workman stands rejected.

Rule is made absolute. Interim relief stands vacated. The parties shall bear their own costs.

{Miss R.M Doshit, J.}

Prakash*